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guish the plaintiff's duty to discharge her debt, but she then owed it to Berners instead of Miller, and by tendering two hundred pounds to the former she would obtain a right to the immediate possession of her jewels. Since it is now settled law in England, however, that a pledgor whose goods have been wrongfully disposed of by his pledgee may not recover them or their value without tendering the amount of the debt which they were originally pledged to secure,¹⁸ the Court was correct in holding that the plaintiff was not entitled to the present possession of her jewels; but it is to be regretted that it did not avail itself of the opportunity clearly to analyse a situation in the law of bailments and pledges which presents new and real difficulties.

A PROFESSOR'S SALARY AS INCOME FROM PROPERTY

Raymer v. Trefry (1921, Mass.) 132 N. E. 190, seems to be a case where there is too little analysis on the part of the law makers and too much on the part of the court. The question at issue was whether the salary of a Harvard professor was "income derived from property" within the language of the Massachusetts Income Tax Amendment of 1915.¹ That Amendment empowered the legislature to impose an income tax, with different rates upon "income derived from different classes of property," and with a lower rate upon "income not derived from property" than upon "income derived from property." A uniform rate, however, was required upon "income from the same class of property." The plaintiff claimed that a tax statute was unconstitutional because it taxed his salary, which he regarded as income not derived from property, at a higher rate than income derived from property, and specifically at a higher rate than income from annuities; such taxation, he contended, was not permissible under the grant of power contained in the Amendment.² The Court held, however, that the Statute was constitutional, since the plaintiff's salary was "income derived from property."

The purpose of the provisions of the Amendment as to different rates of taxation seems obvious. In England there has been since 1907 a difference in rates of taxation in favor of "earned" as against "unearned," or as termed by Gladstone, "lazy" incomes, that is in favor of incomes obtained by personal services as distinguished from

¹⁸ See note 13, *supra*.

¹ Mass. Const. Amendment 44, ratified November, 1915.

² By Mass. Gen. Acts, 1916, ch. 269, sec. 5 (a) income from annuities was taxed at 1½ per cent per annum, while by sec. 5 (b) income from professions, employments, trade, or business was taxed at the same rate. The objection is directed to Mass. Gen. Acts, 1919, ch. 324, sec. 1, which levied an additional tax of 1 per cent on all income received during 1918 and 1919 and taxable under sec. 5 (b) of the act of 1916. In *Tax Commissioner v. Putnam* (1917) 227 Mass. 522, 525, 116 N. E. 904, 907, the court refers to the various unsuccessful attempts to tax incomes made before the general grant of power given by the Amendment.

incomes accruing from investments.³ There has been considerable agitation in this country for such differentiation under our income tax laws, particularly the federal law.⁴ This Amendment seems beyond question to have been designed to permit the legislature thus to discriminate in favor of "earned" incomes, while in general required to keep its rates uniform. The fact that the experience of the draftsmen of the various English statutes was not made use of, but instead there was employed such a hopelessly indefinite term as "property," is but another example of the fondness of lawgivers and lawyers for familiar generalizations the very inclusiveness of which render them meaningless.

But since this word was used in the Amendment it was the duty of the court to attempt its interpretation as it was intended, not as it should be interpreted in any *saturnia regna* where words are used with precision. The Court says, however: "Property is a word of large import. It has been interpreted as including the right to make contracts for labor and for personal service." And it goes for its authority to the mooted federal cases dealing with the struggle between capital and labor. As an abstract proposition one does not see much to criticise in the court's view of property. It is a word of large import and it seems naturally to be used of any legal relation having value to the individual.⁶ But the result of the case, so far as carrying out any conceivable intent that the framers of the Amendment could have said, seems so wrong as to be well nigh absurd. Salary earned by personal endeavors may thus be taxed at a higher rate than income from annuities. "Lazy" incomes may be favored over "industrious" incomes.⁷

³ Finance Act (1907) 7 Edw. VII, c. 13, sec. 19, extended by Finance Act (1910) 10 Edw. VII, c. 8, sec. 67. Under the present law, Finance Act (1920) 10 & 11 Geo. V, c. 18, sec. 16 (continued by Finance Act (1921) 11 & 12 Geo. V, c. 32, sec. 24) there is allowed a deduction of a sum equal to one-tenth of the amount of "earned income," but not exceeding two hundred pounds. Under the English income tax system various kinds of income are classified in different "schedules"; and earned income, with a few comparatively unimportant additions, is limited to income within certain only of these schedules, and is then further limited to income "immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation." Finance Act (1920) 10 & 11 Geo. V, c. 18, sec. 33; Income Tax Act (1918) 8 & 9 Geo. V, c. 40, sec. 14. See *Inland Revenue v. Shiel's Trustees* [1915] S. C. 159; *McDougall v. Inland Revenue* [1919] S. C. 86; Comstock, *British Income Tax Reform* (1920) 10 AM. ECON. REV. 488, 495.

⁴ This has been advocated by the Treasury Department. See Montgomery, *Income Tax Procedure* (1921) 18; *ibid.* (1918) 27-30.

⁵ *Adair v. United States* (1908) 208 U. S. 161, 28 Sup. Ct. 277; *Coppage v. Kansas* (1915) 236 U. S. 1, 35 Sup. Ct. 240; *Bogni v. Perotti* (1916) 224 Mass. 152, 154, 112 N. E. 853, 855 ("the right to work is property"). Dean Pound, in his famous article, *Liberty of Contract* (1909) 18 YALE LAW JOURNAL, 454, has traced the manner in which a particular economic theory of competition was written into the Federal Constitution through use of the dogma of freedom of contract.

⁶ See COMMENTS (1919) 29 YALE LAW JOURNAL, 91, 94, note 16.

⁷ By the classification of incomes made in the Massachusetts statute (Mass.

The court says that there are other classes of income which may be thought to be "not derived from property" and these words may be given effect when the legislature shall make such classification for purposes of taxation. It is difficult to conceive of such other classes. The "right to contract" would seem to cover all cases except income from investments, which surely is income derived from property. Gifts may be thought to be what the court had in mind. Yet the gifts themselves are usually considered capital not income,⁸ and the income from gifts is surely income from property.

It is absolutely necessary to make careful analysis of terms used. But unless one is choosing his own terms, such analysis cannot be made *in vacuo*; it must be made with an eye upon the degree of precision which the chooser of the terms used.⁹ By a precise and fairly accurate conception of property as an abstract term, the court has reached an absurd result which nullifies an important and desirable part of this Tax Amendment.

C. E. C.

WHAT IS A STRIKE?

By statute in New South Wales,¹ strikes were made illegal and any individual or registered union that aided in or instigated a strike was subjected to a penalty. The recent case of *Horley v. Federated Furnishing Trades Society* [1921] A. R. 10,² involved the interesting question as to whether certain facts constituted a strike. An employer had in his service three polishers, all belonging to the same union. One of them persistently completed his work in less time than was considered by his co-workers to be proper. The union, finding itself powerless to

Gen. Acts, 1916, ch. 269) the legislature has actually made a considerable differentiation, operating generally in favor of earned incomes. But the Amendment seems not merely permissive, but also prohibitive, so far as discrimination *against* earned incomes is concerned.

⁸ Maguire, *Capitalization of Periodical Payments by Gift* (1920) 34 HARV. L. REV. 20, 21, citing the rules of the Massachusetts Commissioner of Corporations and Taxation; Federal Revenue Act, 1918, sec. 213 (b) (3) and 233 (40 Stat. at L. 1057, 1065, 1077); cf. Clark, *Eisner v. Macomber and Some Income Tax Problems* (1920) 29 YALE LAW JOURNAL, 735, 740.

⁹ This rule of construction seems elsewhere to have been appreciated by the court. *Tax Commissioner v. Putnam*, *supra* note 2; *Attorney-General v. Methuen* (1921) 236 Mass. 564, 573, 129 N. E. 662, 664. Cf. Mr. Justice Holmes dissenting in *Eisner v. Macomber* (1919) 252 U. S. 189, 219, 40 Sup. Ct. 188, 197: "I think that the word 'incomes' in the Sixteenth Amendment should be read in a sense most obvious to the common understanding at the time of its adoption. For it was for public adoption that it was proposed." In *Evans v. Gore* (1919) 253 U. S. 245, 40 Sup. Ct. 550, the court attempted to ascertain the intention of the framers of the Sixteenth (federal) Amendment, and in so doing seems to have removed the words "from whatever source derived" from the Amendment. See COMMENTS (1920) 30 YALE LAW JOURNAL, 75.

¹ The Industrial Arbitration Act, New South Wales Sts. 1912, Act no. 17, secs. 45, 47.

² Industrial Arbitration Reports, New South Wales.